

regulatory jurisdiction is deemed necessary.

§ 329.16 Use and maintenance of lists of determinations.

(a) Tabulated lists of final determinations of navigability are to be maintained in each district office, and be updated as necessitated by court decisions, jurisdictional inquiries, or other changed conditions.

(b) It should be noted that the lists represent only those waterbodies for which determinations have been made; absence from that list should not be taken as an indication that the waterbody is not navigable.

(c) Deletions from the list are not authorized. If a change in status of a waterbody from navigable to non-navigable is deemed necessary, an updated finding should be forwarded to the division engineer; changes are not considered final until a determination has been made by the division engineer.

PART 330—NATIONWIDE PERMIT PROGRAM

Sec.

330.1 Purpose and policy.

330.2 Definitions.

330.3 Activities occurring before certain dates.

330.4 Conditions, limitations, and restrictions.

330.5 Issuing, modifying, suspending, or revoking nationwide permits and authorizations.

330.6 Authorization by nationwide permit.

AUTHORITY: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413.

SOURCE: 56 FR 59134, Nov. 22, 1991, unless otherwise noted.

§ 330.1 Purpose and policy.

(a) *Purpose.* This part describes the policy and procedures used in the Department of the Army's nationwide permit program to issue, modify, suspend, or revoke nationwide permits; to identify conditions, limitations, and restrictions on the nationwide permits; and, to identify any procedures, whether required or optional, for authorization by nationwide permits.

(b) *Nationwide permits.* Nationwide permits (NWP) are a type of general permit issued by the Chief of Engineers and are designed to regulate with lit-

tle, if any, delay or paperwork certain activities having minimal impacts. The NWPs are proposed, issued, modified, reissued (extended), and revoked from time to time after an opportunity for public notice and comment. Proposed NWPs or modifications to or reissuance of existing NWPs will be adopted only after the Corps gives notice and allows the public an opportunity to comment on and request a public hearing regarding the proposals. The Corps will give full consideration to all comments received prior to reaching a final decision.

(c) *Terms and conditions.* An activity is authorized under an NWP only if that activity and the permittee satisfy all of the NWP's terms and conditions. Activities that do not qualify for authorization under an NWP still may be authorized by an individual or regional general permit. The Corps will consider unauthorized any activity requiring Corps authorization if that activity is under construction or completed and does not comply with all of the terms and conditions of an NWP, regional general permit, or an individual permit. The Corps will evaluate unauthorized activities for enforcement action under 33 CFR part 326. The district engineer (DE) may elect to suspend enforcement proceedings if the permittee modifies his project to comply with an NWP or a regional general permit. After considering whether a violation was knowing or intentional, and other indications of the need for a penalty, the DE can elect to terminate an enforcement proceeding with an after-the-fact authorization under an NWP, if all terms and conditions of the NWP have been satisfied, either before or after the activity has been accomplished.

(d) *Discretionary authority.* District and division engineers have been delegated a discretionary authority to suspend, modify, or revoke authorizations under an NWP. This discretionary authority may be used by district and division engineers only to further condition or restrict the applicability of an NWP for cases where they have concerns for the aquatic environment under the Clean Water Act section 404(b)(1) Guidelines or for any factor of